

**TENNESSEE ETHICS COMMISSION**  
**ADVISORY OPINION NO. 07-02**  
**June 6, 2007**  
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Interpretation of T.C.A. § 3-6-305(b)(6)  
with respect to Members of the Legislature  
participating in a charitable event in which  
their cost of attending is paid for by an employer of a lobbyist.

**INTRODUCTION**

The following Advisory Opinion is written in response to a request from Representative Randy S. Rinks, Majority Caucus Chairman, with regard to a charitable event hosted by the Rural West Tennessee Democratic Caucus to benefit the St. Jude Children's Research Hospital.

Representative Rinks asks the following questions: (1) Is it legal/ethical for legislators to participate in this event even if an organization that employs a lobbyist may have paid St. Jude Children's Research Hospital for the sponsorship of the team?; (2) St. Jude Children's Research Hospital, as a part of the tournament, has a reception for all participants and volunteers. Is it legal for legislators to attend such a reception even if St. Jude credits the reception to an organization which may employ a lobbyist?; (3) St. Jude Children's Research Hospital, as part of the tournament, provides participants and volunteers with "goodie bags." Is it legal for legislators to receive "goodie bags" that include items which may have been donated by organizations that employ lobbyists?; and (4) St. Jude Children's Research Hospital, as a part of the tournament, provides complimentary beverages on the day of the event. Is it legal for legislators to receive complimentary beverages?

In response to the above questions, the Tennessee Ethics Commission ("Commission") concludes the following:

- (1) the charitable event exception to the gift ban cannot be utilized if an employer of a lobbyist is directly paying for sponsorship only of selected legislators rather than for an appropriate class of the *general* public;
- (2) legislators may attend the reception as long as the value of food, refreshments, or beverages do not exceed \$50 per day per person, legislators do not receive their per diem allowance for that day, and an officer or management-level employee of each employer of a lobbyist paying for the event must attend the event;
- (3) legislators may receive a "goodie bag" as long as such bags fit within the statutory definition and legislators do not receive an enhanced or special "goodie bag"; and
- (4) legislators may receive beverages as part of the tournament, even if from an employer of a lobbyist.

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### **BACKGROUND**

The Rural West Tennessee Democratic Caucus (“Caucus”) annually hosts the Wild West Shootout to benefit St. Jude Children’s Research Hospital (St. Jude). According to Representative Rinks, this is a charity golf event with 100% of all funds raised and all donations made going exclusively to St. Jude. From the funds raised, St. Jude pays for all expenses incurred and prizes given at the tournament. The Caucus has held this event for the past 14 years, raising over \$730,000 during that time.

According to Representative Rinks, sponsors provide checks directly to St. Jude and the event is open to anyone that pays the registration fee. Sponsors may include entities that directly employ a lobbyist.

Representative Rinks has also provided the Commission a copy of the 2006 announcement for the event. For 2006, the field was limited to the first 50 teams which paid in advance. Team sponsorship was set at either \$1,500 or \$1,000 per team. The format of the tournament “is a FOUR person scramble and each team sponsor is responsible for creating his or her own team.”

### **DISCUSSION**

(1) Is it legal/ethical for legislators to participate in this event even if an organization that employs a lobbyist may have paid St. Jude for the sponsorship of the team?

T.C.A. § 3-6-305(a)(1) provides that no lobbyist or employer of a lobbyist may provide a gift, directly, or indirectly, to a candidate for public office, official in the legislative branch, official in the executive branch, or immediate family of such candidate or official. However, the statute contains numerous exceptions to this gift prohibition,<sup>1</sup> including T.C.A. § 3-6-305(b)(6), which provides:

Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to:

- (C) Benefits of participation in events held within the state and sponsored by, or for the benefit of, charitable organizations as defined in §48-101-501(1), if provided by an employer of a lobbyist to an official in the executive branch or to an official in the legislative branch; provided, that such events must be open to participation by persons other than officials in the executive branch or officials in the legislative branch or such official’s immediate family and any benefits received must not be enhanced due to the status of the official in the executive or legislative branch, or provided that invitations are extended to the entire membership of the general assembly.

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<sup>1</sup> For a complete list of exceptions, see T.C.A. § 3-6-301(11) and §3-6-305(b)(1) – (11).

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The exception contained in T.C.A. § 3-6-305(b)(6)(C) permits an official in the executive or legislative branch to attend a charitable event sponsored by an employer of a lobbyist if such events are (1) open to participation by persons other than an official in the executive or legislative branch or such official's immediate family, (2) any benefits received are not enhanced due to the status of the official in the executive or legislative branch, and (3) participation in the event is an opportunity and benefit made available to all members of an appropriate class of the general public. It is the interpretation of this last requirement that is at issue.

It is permissible for an employer of a lobbyist, on behalf of a qualified charitable organization, to underwrite or sponsor an event, if all the members of the public or "an appropriate class of the general public" are provided the opportunity and benefit to attend. For example, a large healthcare corporation, an employer of a lobbyist, could sponsor a free admission to the Children's Playhouse, whereby the corporation pays the normal ticket price to the Children's Playhouse and the general public is invited for free. Similarly, if the invitation of free attendance is extended to all school teachers or all senior citizens, these groups would qualify as "an appropriate class of the general public." The fact that some part of the invited appropriate class of the general public may be legislative or executive officials is of no relevance to the larger class' eligibility for free tickets and thus the charitable event exception to the gift ban would apply.

Legislative or executive officials may, however, receive tickets directly from the host charitable organization, provided that the organization is not an employer of a lobbyist, or from any other entity or individual which is not a lobbyist or employer of a lobbyist. Moreover, if the value of any "food, refreshments, meals, or beverages" provided by an employer of a lobbyist to a charitable event is less than \$50 per person, it may qualify under the in-state event exception set forth in T.C.A. § 3-6-305(b)(10). Additionally, if all members of the Legislature are invited and the value of any "entertainment, food, refreshments, meals, beverages or health screenings" are less than \$50 per person, it may qualify for the exception under T.C.A. § 3-6-305(b)(8). In addition, officials can attend events but reimburse employers of lobbyists for the value of the admission ticket. However, if the employer of a lobbyist is not offering tickets or free admission to an appropriate subgroup of the public, no exception to the gift ban would apply. Therefore, unless admission to the charitable event is made available to "an appropriate class of the general public", a legislative or executive official may not directly accept a ticket or sponsorship from an employer of a lobbyist to attend the event, but instead must reimburse the employer for the cost of the ticket, unless one of other exceptions contained in the statute is met.

In the instant situation, it is our understanding that an employer of a lobbyist pays for a team to participate in the golf tournament. The sponsor then determines who will participate on the team. The participants may be an employee of the sponsor's company, a legislator, or a member of the general public. For example, an employer of a lobbyist pays for a sponsorship and invites legislators to be on its team.

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As stated above, T.C.A. § 3-6-305(b)(6)(C) creates an exception to the gift ban for those benefits which arise from participation in in-state charitable events which may be sponsored by employers of lobbyists. This exception requires, however, that the event be open to participation by all members of an appropriate class of the general public. For example, the requirement that the event be open to “all members of an appropriate class of the general public” would be met if an employer of a lobbyist provided free participation in the golf tournament to “senior citizens” or “high school student essay contest winners.” In the current fact scenario provided to us, it appears that an employer of a lobbyist is selecting the legislators who will play for free on its team. In such a situation, the employer of a lobbyist is directly providing a gift to selected legislators and not to an appropriate class of the general public, and thus the exception to the gift ban would not apply.

Employer of a lobbyist sponsorship is permissible, however, if the charitable organization or its fundraising entity (presuming that they too are not employers of a lobbyist) assigns legislators to teams, and the employer of a lobbyist does not retain any control, directly or indirectly, over the selection of legislators to play on its team.

(2) St. Jude, as a part of the tournament, has a reception for all participants and volunteers. Is it legal for legislators to attend such a reception even if St. Jude credits the reception to an organization which may employ a lobbyist?

Pursuant to T.C.A. § 3-6-305(b)(10)(A)(i), legislators may attend the reception as long as the value of any food, refreshments, or beverages that are being provided by an employer of a lobbyist (the exception does *not* apply to items provided by a lobbyist): (a) do not exceed \$50 per person, per day, (b) the “\$50 cap” is not achieved by dividing the value among 2 or more employers of lobbyists, (c) the members of the general assembly do not receive their per diem allowance for that day (e.g., the legislator must choose between receiving the free food, entertainment, etc., or receiving their per diem; if they choose to receive their per diem they must reimburse the employer for the costs of the food, entertainment, etc.), and (d) an officer or management-level employee of each employer of a lobbyist paying for the event must actually attend the event (note that this provision does not require that the CEO of a national corporation actually attend the event – a field level manager of the employer will suffice).

(3) St. Jude, as part of the tournament, provides participants and volunteers with “goodie bags.” Is it legal for legislators to receive “goodie bags” that include items which may have been donated by organizations that employ lobbyists?

Pursuant to T.C.A. § 3-6-305(b)(4), employers of lobbyists may provide “sample merchandise, promotional items, and appreciation tokens, if such merchandise, items and tokens are routinely given to customers, suppliers or potential customers in the ordinary course of business.” Moreover, T.C.A. § 3-6-305(6)(C) provides that, in connection with in-state charitable events, “any benefits received must not be enhanced due to the status of the official in the executive or legislative branch.” Thus, legislators may receive “goodie bags” as long as the

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items fit within the definition contained in T.C.A. § 3-6-305(b)(4) and legislators do not receive enhanced or special “goodie bags”.<sup>2</sup>

(4) St. Jude, as a part of the tournament, provides complimentary beverages on the day of the event. Is it legal for legislators to receive complimentary beverages?

Pursuant to T.C.A. § 3-6-305(b)(10)(A)(i), as part of the tournament, legislators may receive beverages even if from an employer of a lobbyist, as long as the value of the beverages, food or refreshments do not exceed \$50 per person. See Response to Question 2 above.

**CONCLUSION**

Under the facts presented to the Commission by Representative Rinks concerning the Wild West Shootout, an employer of a lobbyist cannot select, either directly or indirectly, the legislators to participate on its team. However, a non-employer of a lobbyist charitable organization or its fundraising entity may assign legislators to play on specific teams. Legislators may receive other benefits of participation in the charitable event in the form of food and beverages, provided that they are not valued in excess of \$50 per person, per day, and even if provided by an employer of a lobbyist. Legislators may accept “goodie bags” from employers of lobbyists if the “goodie bags” fit within the statutory definitions and are not enhanced due to the legislators’ status.

Thomas J. Garland,  
Chair

R. Larry Brown

Donald J. Hall

Linda Whitlow Knight, Esq.

Dianne Ferrell Neal

Benjamin S. Purser, Jr.,  
Commissioners

Date: June 27, 2007

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<sup>2</sup> Pursuant to § T.C.A § 3-6-305(b)(2), it would also be permissible for “goodie bags” to include “informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.”